

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**TYLER DIVISION**

BLUE SPIKE, LLC

*Plaintiff,*

v.

TEXAS INSTRUMENTS, INC., et al.

§ Civil Action No. 6:12-CV-499 MHS

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LEAD CASE

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**SUPPLEMENTAL JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Pursuant to P. R. 4-3, Plaintiff Blue Spike, LLC, Counter-Defendants Blue Spike, LLC, Blue Spike, Inc., and Scott Moskowitz, Counter-Plaintiff Audible Magic Corporation, and Defendants Iritech, Inc., NEUROtechnology, Futronic Technology Co., Ltd., Fulcrum Biometrics, LLC, iPharro Media GmbH, iPharro Media, Inc., Audible Magic Corporation, Photobucket.com, Inc., Qlipso, Inc., Qlipso Media Networks Ltd., Zedge Holdings, Inc., Mediafire, LLC, Dailymotion, Inc., Dailymotion S.A., GoMiso, Inc, iMesh, Inc., Coincident.TV, Inc., Facebook, Inc., MySpace, LLC, Specific Media, LLC, Yap.tv, Inc., Metacafe, Inc., Boodabee Technologies Inc., Harmonix Music Systems, Inc., Brightcove, Inc., Accedo Broadband AB, Accedo Broadband NA, Inc., Soundcloud, Inc., Soundcloud Ltd., WiOffer, LLC, Myxer, Inc., Attributor Corporation, Viggle, Inc., Shazam Entertainment Limited, MorphoTrust USA, Inc., L-1 Identity Solutions, Inc., MorphoTrak, Inc., Safran USA, Inc., Irdeto USA, Inc., Irdeto B.V., CBS Corp., Last.fm Ltd., CBS Interactive, Inc., Infinisource, Inc., Qquest Software Systems, Inc., SMRTV, Inc., The Nielsen Company (US) LLC, Clear Channel Broadcasting, Inc., Entropic Communications, Inc., Cognitec Systems GmbH, Cognitec Systems Corp.,

Civolution USA, Inc., Civolution B.V., Vobile, Inc., Airborne Biometrics Group, Inc., Precise Biometrics, Inc. and Precise Biometrics AB (collectively, “Defendants”) hereby submit this Joint Claim Construction and Prehearing Statement.

At issue in the case are Blue Spike patents: U.S. Patent Nos. 7,346,472 (the “472 patent”), 7,660,700 (the “700 patent”), 7,949,494 (the “494 patent”), and 8,214,175 (the “175 patent”) (collectively “the Blue Spike Patents”). Audible Magic has asserted U.S. Patent No. 6,834,308 (the “308 patent”) against Blue Spike, LLC, Blue Spike, Inc., and Scott Moskowitz.

**A. P.R. 4-3(a): Undisputed Claim Terms, Phrases, or Clauses**

The Parties have agreed that certain claim terms should be construed as proposed in the table below pursuant to Local Patent Rule 4-3(a). The Parties further agree that no construction is required for certain claim terms in the Blue Spike Patents, and that those terms should be given their ordinary meaning as understood by a person of ordinary skill in the respective art:

- Digital reference signal abstract
- Query signal abstract
- Digital representation
- First digital reference signal abstract
- Signal
- Identifies
- Identifying
- Recording
- To be identified
- Digital representation of one of a plurality of different versions of a visual work and a multimedia work

The Parties are still working toward potential agreement on several terms prior to filing of the opening claim construction brief. The agreed constructions in the Blue Spike Patents are as follows:

| <b>Term</b>                | <b>Patent (claims)</b>                | <b>Agreed Construction</b>                                 |
|----------------------------|---------------------------------------|--|
| Hashed abstract            | <b>700</b> (11,50)<br><b>494</b> (21) | “data that results from performing a Hash on an Abstract”  |
| Perceptible characteristic | <b>700</b> (8)<br><b>494</b> (5,18)   | “characteristic perceived by a person”                     |
| Cognitive characteristic   | <b>700</b> (8)<br><b>494</b> (18)     | “characteristic understood by a person”                    |
| Subjective characteristic  | <b>700</b> (8)<br><b>494</b> (18)     | “characteristic perceived differently by different people” |
| Perceptual quality         | <b>700</b> (8)<br><b>494</b> (18)     | “quality perceived by a person”                            |
| Cognitive feature          | <b>494</b> (5)                        | “a feature that is understood by a person”                 |

**B. P.R. 4-3(b): Proposed Constructions of Disputed Claim Terms, Phrases, or Clauses**

Exhibit A includes Plaintiff’s and Defendants’ proposed constructions for the disputed claim terms, phrases, or clauses of the Blue Spike Patents pursuant to Local Patent Rule 4-3(b). Exhibit B includes Counter-Plaintiff’s and Counter-Defendants’ proposed constructions for the disputed claim terms, phrases, or clauses of the ’308 patent pursuant to Local Patent Rule 4-3(b). The Parties request construction of these claim terms, phrases, or clauses by the Court. Exhibits A and B also include the intrinsic and extrinsic evidence that the Parties may rely on in support of their respective proposed constructions.

**C. P.R. 4-3(c): Anticipated Length Of Claim Construction Hearing**

The Court has allocated each side 1.5 hours for the claim construction hearing on October 1, 2014. The Parties assume that this allocation of time is to address only the Blue Spike Patents; therefore, Counter-Plaintiff and Counter-Defendants request an additional half hour each of argument time to address claim constructions for the '308 patent.

**D. P.R. 4-3(d): Witnesses To Be Called At The Claim Construction Hearing**

The Parties agree that they may call witnesses at the claim construction hearing. Specifically, Blue Spike may have an expert, Dr. Ahmed Tewfik, provide a declaration or testify at the Markman hearing, that Blue Spike's proposed construction is consistent with the understanding that one of ordinary skill in the art would have had of the disputed claim term in light of the intrinsic and extrinsic evidence. To the extent necessary, Defendants may call an expert witness to respond to any opinions offered by Dr. Tewfik. One or more Defendants intend to rely upon the expert testimony of Professor Matthew Turk to rebut any expert testimony offered by Blue Spike or to establish the state of the art at the time of the alleged invention. One or more Defendants intend to rely upon the expert testimony of Dr. John Strawn and/or John Snell to rebut any expert testimony offered by Blue Spike or to establish the state of the art at the time of the alleged invention or to establish that one or more claims terms at issue is indefinite. One or more Defendants intend to rely upon the expert testimony of Dr. Kevin W. Bowyer to rebut any expert testimony offered by Blue Spike or to establish the state of the art at the time of the alleged invention or to establish that one or more claims terms at issue is indefinite.

**E. P.R. 4-3(e): Issues For A Prehearing Conference**

The Parties are not aware of any issues that require a prehearing conference.

Dated: August 7, 2014

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